

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MAURECE KAVEL,

Petitioner,

v.

Civ. No. 09-958 WJ/RLP

ANTHONY ROMERO, Warden, *et al.*,

Respondents.

ORDER

THIS MATTER comes before the Court on the Magistrate Judge's Report and Recommendation [Doc. 16]. Respondents filed a Motion to Dismiss the petition as being second or successive. The Report recommended that Petitioner's claim that he received incorrect credits for time-served should be allowed and ordered Respondents to submit an Answer on that issue. No objections were filed by either party as to this issue.

Petitioner filed objections [Doc. 19] as to the Report's recommendation that Petitioner's claim that he was tried while mentally incompetent be dismissed as a second or successive petition, citing *In re Cline*, 531 F.3d 1249 (10th Cir. 2008). Petitioner's objections indicate that this claim was determined to be time-barred in the previous matter, Civ. 07-0505 and therefore had not yet been adjudicated.

The Court has made a *de novo* review of the record and finds that the Tenth Circuit Court of Appeals determined that Mr. Kavel's earlier petition was time-barred. See Civ. 07-508 MV/LFG [Doc. 25-2]. If the matter was time-barred in 2007 and it is barred in 2009. He cannot raise the claim twice and that claim will be dismissed. *In re Cline*. Petitioner's other claim has not previously been raised and will go forward.


Finally, the Report recommended that two of Petitioner's motions be denied as moot. The Court agrees. Accordingly, the Court shall adopt the Magistrate Judge's Report and Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation is adopted by the Court; and

IT IS FURTHER ORDERED that Respondents' Motion to Dismiss [Doc. 8] be granted in part and denied in part as stated herein; and

IT IS FURTHER ORDERED that Petitioner's Motion Amending Habeas Corpus [Doc. 13] and Petitioner's Motion to Deny Respondents' Response [Doc. 14] be denied as moot.

IT IS SO ORDERED.



William Johnson
United States District Judge